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12	INITED STATES DISTRICT COLIDS	
13	UNITED STATES DISTRICT COURT	
14	CENTRAL DISTRICT OF CALIFORNIA	
15	SOUTHERN DIVISION	
16		
17	HYPER ICE, INC., a California	CASE NO.
18	corporation,	
	Plaintiff,	COMPLAINT FOR PATENT
19	Flamuii,	INFRINGEMENT
20	VS.	DEMAND FOR JURY TRIAL
21	THER A DODY, INC.	Trial Data: Nama Sat
22	THERABODY, INC.,	Trial Date: None Set
23	Defendant.	
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Plaintiff Hyper Ice, Inc. ("Plaintiff" or "Hyperice") alleges as follows for 1. this Complaint for Patent Infringement ("Complaint") against defendant Therabody, Inc. ("Defendant" or "Therabody"):

THE PARTIES

- Hyperice is a California corporation with its principal place of business 2. at 525 Technology Drive, Suite 100, Irvine, California 92618.
- Hyperice is informed and believes, and based thereon alleges, that 3. Defendant is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 1640 S. Sepulveda Blvd., Suite 300, Los Angeles, CA 90025.
- 4. On information and belief, either itself or through its subsidiaries, parents, or other related companies, Defendant sells infringing products, via its website, Amazon.com and various retail stores, to consumers in this District, throughout the State of California, and throughout the United States.

JURISDICTION AND VENUE

- 5. This is an action for patent infringement under 35 U.S.C. §§ 271 et seq. brought by Hyperice against Defendant for Defendant's infringement of U.S. Patent No. 12,036,174 ("the '174 Patent").
- 6. This Court has subject matter jurisdiction over Hyperice's claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because those claims arise under the patent laws of the United States, 35 U.S.C. §§ 1 et seq.
- 7. This Court has personal jurisdiction over Defendant by virtue of, *inter* alia, Defendant's conduct of business in this District; its purposeful availment of the rights and benefits of California law; and its substantial, continuous, and systematic contacts with the State of California and this District. On information and belief, Defendant: (1) intentionally markets and sells its infringing products to residents of this State; (2) enjoys substantial income from this State; and (3) maintains its principal place of business in this State.

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Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 28 8. U.S.C. § 1400(b) because Defendant has committed acts of infringement in this District and has a regular and established place of business in this District.

GENERAL ALLEGATIONS

- 9. The '174 Patent is entitled "Communication Devices, Methods, and Systems" and issued on July 16, 2024, claiming priority to Application No. 18/526,980, filed on December 1, 2023, and to, inter alia, Provisional Application No. 62/575,951, filed on October 23, 2017. A true and correct copy of the '174 Patent is attached hereto as Exhibit 1.
- 10. Matthew Robert Leaper is the named inventor of the inventions disclosed in the '174 Patent. DataFeel Inc. is the assignee of the '174 Patent, and Hyper Ice, Inc. is an exclusive licensee that has been granted the express, irrevocable right to, inter alia, sublicense, enforce, and defend the '174 Patent.
- This action arises out of Defendant's direct infringement of the '174 11. Patent.
- 12. Defendant offers for sale and/or sells products that infringe the '174 Patent, including but not limited to the TheraFace PRO, The Complete TheraFace Bundle (TheraFace PRO with TheraFace Hot and Cold Rings), and the Theragun PRO Plus (collectively "the Accused Products"). Attached as Exhibits 2-4 are claim charts for the Accused Products.

COUNT 1 – PATENT INFRINGEMENT

- 13. Hyperice incorporates by reference the allegations in Paragraphs 1-12 above.
- 14. Defendant has infringed and continues to infringe the '174 Patent under the Patent Laws of the United States, 35 U.S.C §§ 271 et seq. Defendant offers for sale and/or sells the Accused Products.
 - 15. Defendant infringes at least Claim 17 of the '174 Patent. The Accused

27 28 Products are battery-powered devices that include the following claim limitations. Hyperice believes that the Accused Products literally meet the following claim limitations. If any of the limitations are not literally met, the Accused Products meet the limitations under the doctrine of equivalents, because they perform the same function in substantially the same way to achieve substantially the same result, and/or because the relevant structures and functions of the infringing products are insubstantially different from the claimed limitation:

16. A treatment device, comprising:

- a. a body provided with a power source and a processing unit configured to receive input data and generate a control signal based on the input data, the body including a skin contacting surface maintainable against skin of a user by a force applied by a hand of the user when gripping the body; and
- b. a first energy generator element and a second energy generator element coupled to the body, the first and second energy generator elements being independently operable to convert electricity from the power source into a first energy type and a second energy type, respectively, and direct the first and second energy types toward an area of skin, the first energy generator element including an impact generator element having a tissue contact surface that is linearly actuatable along an axis to contact and cause corresponding physical movement of the area of skin;
- c. wherein the processing unit is operable to output an optical signal on a display that is observable by eyes of the user, the output corresponding to the control signal.
- 17. Defendant's infringement of the '174 Patent has caused, and will continue to cause, significant damage to Hyperice. As a result, Hyperice is entitled to an award of damages adequate to compensate it for the infringement in an amount

PRAYER FOR RELIEF

WHEREFORE, Hyperice prays for the following relief:

- That this Court enter judgment of infringement of the '174 Patent in favor of Hyperice and against Defendant;
- That this Court award Hyperice compensatory damages for infringement 2. of the '174 Patent, as well as interest thereon;
 - 3. That this Court award Hyperice its costs of suit;
- 4. That this Court award Hyperice increased damages in an amount not less than three times the damages assessed for Defendant's infringement of the '174 Patent, in accordance with 35 U.S.C. §284.
- That this Court declare this an exceptional case under 35 U.S.C. §285 5. and award Hyperice its attorneys' fees and any other costs incurred in connection with this action;
- That this Court award Hyperice prejudgment and post-judgment interest; 6. and
- 7. That this Court grant such further relief as the Court deems just and proper.

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DATED: September 19, 2024 MILLER BARONDESS LLP 1 2 By: /s/Ben Herbert BEN HERBERT, CA#277356 3 bherbert@millerbarondess.com 4 2121 Avenue of the Stars, 26th Floor Los Angeles, CA 90067 5 Telephone: 310.552.4400 6 LEWIS BRISBOIS BISGAARD & 7 SMITH LLP 8 LAWRENCE R. LAPORTE, CA#130003 lawrence.laporte@lewisbrisbois.com 9 633 West 5th Street, Suite 4000 **10** Los Angeles, California 90071 Telephone: 213.250.1800 11 Facsimile: 213.250.7900 **12** Attorneys for Plaintiff 13 HYPER ICE, INC. 14 15 16 **17** 18 19 **20** 21 22 23 24 **25 26** 27 28

DEMAND FOR JURY TRIAL 1 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff 2 HYPER ICE, INC. hereby demands a trial by jury of all issues triable by jury. 3 4 MILLER BARONDESS LLP 5 DATED: September 19, 2024 6 7 By: /s/ Ben Herbert BEN HERBERT, CA#277356 8 bherbert@millerbarondess.com 2121 Avenue of the Stars, 26th Floor 9 Los Angeles, CA 90067 **10** Telephone: 310.552.4400 11 LEWIS BRISBOIS BISGAARD & **12** SMITH LLP LAWRENCE R. LAPORTE, CA#130003 13 lawrence.laporte@lewisbrisbois.com 14 633 West 5th Street, Suite 4000 Los Angeles, California 90071 15 Telephone: 213.250.1800 16 Facsimile: 213.250.7900 **17** Attorneys for Plaintiff 18 HYPER ICE, INC. 19 **20** 21 22 23 24 **25 26** 27 28